Stamford Holdings Sdn Bhd v Kerajaan Negeri Johor & Ors

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO J-02-229 OF 1995
LAMIN PCA, AHMAD FAIRUZ AND DENIS ONG JJCA
6 JANUARY 1998

Civil Procedure *— Pleadings — Striking out statement of claim — No reasonable cause of action — Respondents did not file defences — Whether facts as disclosed in statement of claim could be assumed to be true — Whether this gave appellant cause of action — Rules of the High Court 1980 O 18 r 19(1)(a)*

Land Law *— Acquisition of land — Objection against acquisition — Compulsory acquisition of appellant's land — Unconstitutionally deprived appellant of its property — Whether acquisition could be challenged on ground of bad faith — Land Acquisition Act 1960 s 8*

The appellant owned about 8,500 acres of agricultural land in Johor ('the land'). In 1984, the appellant applied to the first respondent for development of about 1,788 acres of the land. The first respondent did not approve the application even after four years. However, the third and fourth respondents were in a position to procure the necessary approvals for the development of the 1,788 acres from the first respondent. The appellant transferred the 1,788 acres to its subsidiary company and gave 30% equity in the company to the third and fourth respondents for RM1.8m. The conversion and layout plans of the appellant were then speedily approved by the first respondent. To facilitate the development of the land, a joint-venture agreement was signed between the appellant and the third respondent's group. The 1,788 acres were then transferred to the development company out of which 475.93 acres were subsequently sold. The third and fourth respondents later approached the appellant to jointly develop the remaining 6,600 acres of the land. However, they wanted 70% equity in the proposed new development company and the land was to be sold to that company at RM30,000 per acre. The parties could not agree on this and the respondents began proceedings for the compulsory acquisition of the 6,600 acres.

The appellant claimed that the acquisition was an unconstitutional means of depriving it of its property and is outside the ambit of s 3 of the Land Acquisition Act 1960. The appellant's statement of claim against all the respondents was struck out under O 18 r 19(1)(a) of the Rules of the High Court 1980 ('the RHC') on the ground that there was no cause of action, since a declaration under s 14(2) of the Land Acquisition Act 1960 cannot be challenged. The appellant appealed against the High Court's decision. The respondents, however, have not filed their defences to the appellant's statement of claim.

Held, allowing the appeal:

The acquisition proceedings in the circumstances of this case may be challenged on the ground of mala fide or bad faith. It is the acquisition proceedings that had deprived the appellant of its legitimate expectation of profit from the development of the aforesaid 6,600 acres of land. Those proceedings had in fact deprived the appellant of its property which could have been at least sold with a profit if the property had not been acquired, assuming that the first respondent would never have approved their application for development. Further, the facts stated in the statement of claim clearly show the unconscionable or unmeritorious conduct of the respondents. In the absence of any defence filed, those facts are assumed true and if they stand unrebutted, would constitute a good cause of action against the respondents (see pp 613I and 614A–B, G); *S Kulasingam & Anor v Commissoner of Lands, Federal Territory & Ors* [1982] 1 MLJ 204 followed.

[Bahasa Malaysia summary

Perayu memiliki kira-kira 8,500 ekar tanah pertanian di Johor ('tanah tersebut'). Pada tahun 1984, perayu memohon kepada penentang pertama untuk memajukan kira-kira 1,788 ekar tanah tersebut. Penentang pertama tidak meluluskan permohonan walaupun selepas empat tahun. Namun demikian, penentang ketiga dan keempat berada dalam kedudukan untuk mendapat kelulusan yang diperlukan untuk pembangunan 1,788 ekar daripada penentang pertama. Perayu memindah 1,788 ekar itu kepada syarikat subsidiarinya dan memberikan 30% ekuiti dalam syarikat kepada penentang ketiga dan keempat pada harga RM1.8 juta. Pelan-pelan perayu untuk penukaran dan susun atur kemudiannya diluluskan dengan cepatnya oleh penentang pertama. Bagi memudahkan pembangunan tanah tersebut, satu perjanjian usahasama telah ditandatangani di antara perayu dan kumpulan penentang ketiga. Tanah sebanyak 1,788 ekar kemudiannya dipindah kepada syarikat pembangunan dari mana 475.93 ekar kemudiannya dijual. Penentang ketiga dan keempat kemudiannya mendekati perayu supaya sama-sama memajukan 6,600 ekar tanah yang masih ada. Namun begitu, mereka inginkan 70% ekuiti dalam syarikat pembangunan baru yang dicadangkan dan tanah tersebut haruslah dijual kepada syarikat itu pada harga RM30,000 seekar. Pihak-pihak berkenaan tidak dapat bersetuju tentangnya dan penentang-penentang memulakan prosiding untuk pengambilan wajib ke atas 6,600 ekar itu.

Perayu menuntut bahawa pengambilan adalah satu cara yang tidak mengikut perlembagaan untuk melucutkan haknya dan adalah di luar lingkungan s 3 Akta Pengambilan 1960. Pernyataan tuntutan perayu terhadap semua penentang dibatalkan di bawah A 18 k 19(1)(a) Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT') atas alasan bahawa tiada kausa tindakan, oleh kerana satu perisytiharan di bawah s 14(2) Akta Pengambilan Tanah 1960 tidak boleh dicabar. Perayu merayu terhadap keputusan Mahkamah Tinggi. Walau bagaimanapun, penentang-penentang belum memfailkan pembelaan mereka kepada pernyataan tuntutan perayu.

Diputuskan, membenarkan rayuan:

Prosiding pengambilan dalam hal keadaan kes ini boleh dicabar atas alasan mala fide atau tidak suci hati. Ini adalah merupakan prosiding pengambilan yang telah melucutkan perayu daripada jangkaan sah keuntungan daripada pembangunan 6,600 ekar tanah yang tersebut. Prosiding itu pada hakikatnya telah melucutkan perayu daripada haknya yang sekurang-kurangnya boleh dijual dengan keuntungan andainya harta tidak diambil, dengan anggapan bahawa penentang pertama tidak akan meluluskan permohonan mereka untuk pembangunan. Seterusnya, fakta yang dinyatakan dalam pernyataan tuntutan jelas menunjukkan kelakuan penentang-penentang yang tidak berhati perut atau yang tidak patut dipuji. Dalam ketiadaan apa-apa pembelaan yang difailkan, fakta-fakta itu dianggap benar dan sekiranya tetap tidak dipatahkan, akan membentuk kausa tindakan yang baik terhadap penentang-penentang (lihat ms 613I dan 614A–B, G); *S Kulasingam & Anor v Commissoner of Lands, Federal Territory & Ors* [1982] 1 MLJ 204 diikut.]

Notes

For cases on striking out statement of claim, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2711–2747.

For a case on objection against acquisition, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) para 1276.

Cases referred to

Low Yat v GC Grace [1947] MLJ 117 (refd)

Mooney & Ors v Peat, Marwick, Mitchell & Co & Anor [1967] 1 MLJ 87 (refd)

S Kulasingam & Anor v Commissoner of Lands, Federal Territory & Ors [1982] 1 MLJ 204 (folld)

Sia Siew Hong & Ors v Lim Gim Chian & Anor [1995] 3 MLJ 141 (refd)

Legislation referred to

Land Acquisition Act 1960 ss 3, 8, 14

Rules of the High Court 1980 O 18 r 19(1)(a), (2)

V Siva, Manjit Singh, Fiona Bodipalar, W Satchithanandan and *R Thayalan* (*Sykt Kam Woon Wah*) for the appellant.

Zainal Adzam Abd Ghani (State Legal Adviser, Johor) for the first and second respondents. *Zaki Azmi* held watching brief for the second respondent.

Yusuf Khan and *M Pathmanathan* (*Yusuf Lee & Pathma*) for the third and fourth respondents.

Roger Tan Kor Mee, Chin Yew Meng and *Hanisah bte Hamzah* (*Nik Saghir & Ismail*) for the fifth respondent.

Ahmad Fairuz JCA (delivering the judgment of the court): This is an appeal against the decision of the High Court at Johor Bahru made on

14 March 1995 wherein the appellant's statement of claim against all the respondents herein was struck out under O 18 r 19(1)(a) of the Rules of the High Court 1980. The writ of summons and the statement of claim were filed by the appellant on 4 February 1995. On 13 March 1995, third and fourth respondents filed their application to strike out the writ and statement of claim. The other respondents filed similar applications on 16 March 1995. All the respondents however have not filed their defences.

As is clear from their applications, the respondents applied to strike out the writ and statement of claim under O 18 r 19(1)(a) of the Rules of the High Court 1980 ('the RHC') which reads:

> The court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement, of any writ in the action, or anything in any pleading or in the indorsement on the ground that —
>
> (a) it discloses no reasonable cause of action or defence as the case may be; ... .

After referring to this rule, the learned judicial commissioner, in his grounds of decision, then rightly referred to O 18 r 19(2) of the RHC which states:

> No evidence shall be admissible on an application under para (1)(a).

Learned counsel for the appellant, however, contended that the learned judicial commissioner had failed to keep 'in the forefront of his judicial mind the principle in the case of *Mooney & Ors v Peat, Marwick, Mitchell & Co & Anor* [1967] 1 MLJ 87'. In that case too, no defence had been filed and Raja Azlan Shah J (as he then was) stated at p 88:

> It is firmly established that the power exercisable under r 4 is only appropriate in cases which are plain and obvious so that a judge can say at once that a statement of claim as it stands is insufficient, even if proved, to entitle the plaintiff to the relief of which he asks for: see the judgment of Lindley MR in *Hubbuck & Sons v Wilkinson, Heywood & Clark Ltd* [1899] 1 QB 86 at p 91. Where the situation arises, the pleadings and particulars alone shall be considered and all the allegations in it shall be presumed to be true, and it is only on that assumption that any statable case can be made for this application: see *Peck v Russell* (1923) 4 FMSLR 32 at p 34. The court cannot and indeed is not empowered to look behind the pleadings and particulars if it discloses a reasonable cause of action. So long as the statement of claim discloses some ground of action, the mere fact that the plaintiff is not likely to succeed on it at the trial is no ground for it to be struck out: see *Boaler v Holder* (1886) 54 LT 298.

Learned counsel for the appellant further contended that the learned judicial commissioner would have had no difficulty had he complied with this principle in deciding whether there is a reasonable cause of action disclosed in the statement of claim. Learned appellant's counsel then submitted that the allegations contained in the statement of claim have to be assumed as correct and true in the absence of defence being filed by the respondents. For this, he relied on the case of *Low Yat v GC Grace* [1947] MLJ 117.

As learned counsel for the respondents conceded that defence had not been filed by any of them, we agree with the appellant's counsel's contention that the contents of the statement of claim have to be assumed as true. Before us, learned counsel for the first and second respondents agreed with this assumption. Inferentially, learned counsel for the other respondents too accepted the assumption as correct because the main focus of the submissions of learned counsel for the third and fourth respondents were on the issue of whether the contents of the statement of claim have disclosed a good cause of action in conspiracy against the respondents; whilst learned counsel for the fifth respondent submitted that because the statement of claim was badly drafted, the fifth respondent was therefore 'entitled to be relieved of the burden of going to trial'. It was with this assumption in mind that we set out to examine the statement of claim which discloses the following facts:

(a) The appellant is a Malaysian company and is owned essentially by three families. They are the Seet family from Singapore, the Gan family and the Wong family from Kuala Lumpur.

(b) The appellant owned about 8,500 acres of agricultural land in Johor ('the said land').

(c) Some time in 1984, the appellant applied to the first respondent for development of about 1,788 acres of the said land. However, even after a lapse of about four years, the first respondent did not approve the application.

(d) Some time in 1988, the appellant came to know the third and fourth respondents who represented to the appellant that they were in a position to procure the necessary approvals for the development of the said 1,788 acres from the first respondent as they have direct links with the second respondent who was in control of the first respondent. Such links were demonstrated by the third and fourth respondents when, together with the second respondent, they attended a meeting with the appellant at a Chinese restaurant in Singapore. Thereafter, a series of meetings and negotiations took place between them and finally, the appellant agreed to transfer the said 1,788 acres to its subsidiary company. The appellant also gave 30% equity in the company to the third and fourth respondents for a consideration of RM1.8m. Not long after this, the conversion and layout plans of the appellant were speedily approved by the first respondent. To facilitate the development of the land, a joint-venture agreement was signed between the appellant and the third respondent's group. The 1,788 acres were then transferred to the development company at RM70,000 per acre. Some time in August 1991, 475.93 acres out of the 1,788 acres were sold to Austin Hill Country Resort for RM57,111,600, ie at a cost of about RM120,000 per acre. Based on this sale, the value of the third respondent's group's 30% equity was RM53,600,000.

(e) Shortly after the appellant's subsidiary company took off with the project on the 1,788 acres, the third and fourth respondents approached the appellant to jointly develop the remaining 6,600 acres

of the said land. For this venture, the third and fourth respondents wanted 70% equity in the proposed new development company and the land was to be sold to that company at RM30,000 per acre. The appellant counter proposed that they hold 70% equity in that company and the land be sold at RM70,000 per acre. The appellant then held a series of meetings and negotiations with the second, third and fourth respondents to resolve the issue of the shareholdings and the sale price of the land. In 1991, the second respondent himself attended a meeting at Shangri-La Hotel. At that meeting, threats were made that the 6,600 acres would be acquired by the first respondent unless the appellant agreed to the terms set by the third respondent's group. Other similar threats were also made by the third respondent's group at other meetings. In December 1992, the respondents caused to be issued the notice under s 4 of the Land Acquisition Act 1960. This notice was allowed to lapse on 31 December 1993. The parties, however, recommenced negotiations and the appellant had then proposed that the respondents be given 49% equity whilst the sale price of the land remained at RM70,000 per acre. After a series of meetings on the issue of the shareholdings and the land price, the parties nevertheless failed to reach a consensus. Thereafter, the respondents caused steps to be taken to proceed for the second time with the compulsory acquisition of the said 6,600 acres. Hence, the writ of summons and statement of claim were filed in the High Court.

On the basis of the facts related in para 3 above, the statement of claim further alleges that:

(a) the compulsory acquisition is null and void as the purpose of the purported decision is outside the ambit of s 3 of the Land Acquisition Act 1960 (para 42);

(b) the whole of the acquisition proceedings is ab initio void and inoperative (para 43);

(c) the acts [as in para 3 above] constitute an unconstitutional means of depriving the appellant of its property and accordingly is void and inoperative (para 46);

(d) the acts [as in para 3 above] were done for the purpose of teaching the appellant a lesson and punishing the appellant and its directors by depriving it of its property. This is an act of bad faith and accordingly is void and inoperative (para 48); and

(c) the acts [as in para 3 above] were done collectively and collusively by them as an act of vengeance against the appellant, its director and shareholders for not submitting to the second, third and fourth respondents' unjust demands of 70% control of the new development company and the sale price of RM30,000 per acre of the appellant's land. In the premises, the purported exercise of land acquisition is grounded on mala fide and accordingly is null and void and ought to be set aside by the honourable court (para 49).

Having referred to the facts disclosed in the statement of claim, learned counsel for the appellant drew this court's attention to the learned judicial commissioner's grounds of decision which show that the learned judicial commissioner was of the view that the declaration under s 14 of the Land Acquisition Act 1960 cannot be challenged in any way. The relevant s 14(2) of the Land Acquisition Act 1960 reads:

> Every award prepared under sub-s (1) shall be filed in the office of the Land Administrator and shall be final and conclusive evidence of the area of any scheduled land, of its value in the opinion of the Land Administrator, and of the apportionment of the compensation awarded by the Land Administrator, whether the persons interested therein have or have not appeared at the enquiry.

On this issue, the learned Abdoolcader J (as then was) when delivering the judgment of the Federal Court in *S Kulasingam & Anor v Commissoner of Lands, Federal Territory & Ors* [1982] 1 MLJ 204, said (at p 211):

> The conclusive evidence clause in s 8(3) which we have mentioned in effect provides that the decision of the State Authority that the land is needed for the purpose specified under s 8(1) is final and conclusive and cannot be questioned (*Wijeyesekera v Festing* AIR 1919 PC 155). The Privy Council however held in *Syed Omar Alsagoff & Anor v Government of the State of Johore* [1979] 1 MLJ 49 (at p 50) that it may be possible to treat a declaration under s 8 as a nullity if it be shown that the acquiring authority has misconstrued its statutory powers or that the purpose stated therein does not come within s 3 or if bad faith can be established. The purpose of the acquisition can therefore be questioned but only to this extent.

Section 8 of the Land Acquisition Act 1960, which was referred to in the Federal Court's judgment, reads:

> Declaration that land is required for a public purpose
>
> (1) When the State Authority decides that any of the lands referred to in s 7 are needed for any of the purposes referred to in s 3, a declaration in Form D shall be published in the Gazette.
>
> (2) A copy of the list of lands referred to in s 7(b), amended, if necessary, in accordance with the decision of the State Authority, shall be included as a schedule to the declaration in Form D.
>
> (3) A declaration in Form D shall be conclusive evidence that all the scheduled land referred to therein is needed for the purpose specified therein.
>
> (4) A declaration under sub-s (1) shall lapse and cease to be of any effect on the expiry of two years after the date of its publication in the Gazette in so far as it relates to any land or part of any land in respect of which the Land Administrator has not made an award under s 14(1) within the said period of two years, and, accordingly, all proceedings already taken or being taken in consequence of such declaration in respect of such land or such part of the land shall terminate and be of no effect.

On the strength of these authorities and in the light of the allegations in the statement of claim, we have no alternative except to agree with learned appellant's counsel's contention that, in the circumstances of this case, the

acquisition proceedings may be challenged on the ground of mala fide or bad faith. And it is important at this stage to note, as submitted by learned counsel for the appellant, that it is the acquisition proceedings that had deprived the appellant of its legitimate expectation of profit from the development of the aforesaid 6,600 acres of land. Those proceedings had in fact deprived the appellant of its property which could have been at least sold with a profit if the property had not been acquired — even assuming that the first respondent would never have approved their application for development. It is also appropriate at this stage to recollect what Raja Azlan Shah J (as he then was) said in *Mooney*'s case (at p 88E–F):

> So long as the statement of claim discloses some ground of action, the mere fact that the plaintiff is not likely to succeed on it at the trial is no ground for it to be struck out: see *Boaler v Holder* (1886) 54 LT 298.

We would also, at this juncture, refer to what Gopal Sri Ram JCA said (when commenting on the doctrine of estoppel) in the case of *Sia Siew Hong & Ors v Lim Gim Chian & Anor* [1995] 3 MLJ 141 (at p 155):

> Another way of stating the doctrine when applying it to written law is comprised in *the maxim 'equity will not permit statute to be used as an engine of fraud'. It is a doctrine of wide operation. ... The doctrine, when invoked, has the effect of precluding a litigant who is guilty of unconscionable or unmeritorious conduct from relying upon a statutory provision that would defeat his opponent's case. An application of the doctrine requires a meticulous examination of the facts and circumstances of the particular case to determine whether there has been any inequitable conduct.* The doctrine has been applied to several statutes, including those governing contracts, wills, trusts and assignments. The categories of statutes to which the doctrine may be applied are not closed and I am certainly unable to find any serious impediment in applying it to bar a litigant from raising and relying upon the provisions of the Limitation Act 1953. (Emphasis added.)

The facts as stated in the statement of claim (particularly those in paras 26(f), 28(c), (e), (f) and (h)) clearly show the 'unconscionable or unmeritorious conduct' of the respondents. At least those facts are, in the absence of any defence filed, assumed true, stand unrebutted and would constitute a good cause of action against the respondents. As such, the respondent's application should not have been granted by the High Court. For the reasons stated above the, appeal was allowed with costs.

Appeal allowed.

Reported by David Lai